BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

PATRICIA PONDER-COPPAGE	)	
Claimant	)	
VS.	)	
	)	Docket No. 210,809
STATE OF KANSAS	)	
Respondent	)	
AND	)	
	)	
STATE SELF-INSURANCE FUND	)	
Insurance Carrier	)	

ORDER

Claimant appealed Administrative Law Judge Nelsonna Potts-Barnes' April 26, 2001, Review and Modification of an Award. The Appeals Board heard oral argument on November 9, 2001, in Wichita, Kansas.

APPEARANCES

The claimant appeared by her attorney, Jim Lawing of Wichita, Kansas. Respondent and its insurance carrier appeared by their attorney, Jeffery R. Brewer of Wichita, Kansas.

RECORD AND STIPULATIONS

The Appeals Board (Board) has considered the record and has adopted the stipulations listed in the Review and Modification of an Award.

ISSUES

The Administrative Law Judge (ALJ) denied claimant's request to modify a July 23, 1996, Agreed Award. Claimant originally suffered injuries to her cervical spine, left shoulder and left arm in an August 23, 1994, work-related accident while employed by respondent. Respondent provided medical treatment for claimant's injuries, claimant was paid 16.72 weeks of temporary total disability compensation and the parties agreed claimant was entitled to a 5 percent permanent partial general disability award based on permanent functional impairment. At the time of the award, claimant had returned to work at a comparable wage and, therefore, work disability was not an issue. But in July 1997 claimant took a voluntary layoff offered by respondent because respondent was closing the hospital where claimant was employed in December 1997. In denying claimant's request to modify the Agreed Award, the ALJ found claimant had failed to meet her burden of proving an increase in the nature and extent of her disability.

On appeal, claimant argues she is entitled to a modification of the original Agreed Award from a 5 percent permanent partial general disability to a higher work disability because she proved through her testimony and the testimony of various physicians that she now has a 100 percent work task loss and a 100 percent wage loss.[1] Claimant argued, in her brief before the Board, that she was now permanently and totally disabled[2] and entitled to permanent total disability compensation up to the statutory maximum of $125,000.[3] But, at oral argument before the Board, claimant's attorney specifically clarified that the only issues before the Board were whether the Agreed Award should be modified because of an increase in claimant's permanent functional impairment or because she was no longer earning 90 percent or more of her pre-injury average weekly wage and she is now entitled to permanent partial general disability compensation based on a higher work disability.

Conversely, respondent contends claimant failed to sustain her burden of proving that she has either an increase in her permanent functional impairment or that she is now entitled to a work disability. Thus, respondent requests the Board to affirm the ALJ's award that denied claimant's request to modify July 23, 1996, Agreed Award.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record, considering the parties' briefs and arguments, the Board makes the following findings and conclusions:

Claimant was injured on August 23, 1994, when a patient claimant was caring for fell on her. On the date of the accident, claimant was 53 years of age and had been employed by the respondent as a Mental Retardation Technician 1 (MRT1) for ten years. Respondent immediately provided medical treatment first through David J. Nemmers, M.D., a local physician in Winfield, Kansas. Dr. Nemmers diagnosed claimant with acute cervical and left upper back strain. He took claimant off work, prescribed medication and physical therapy.

Between claimant's accident date of August 23, 1994, and the July 23, 1996, Agreed Award, claimant continued under the care of Dr. Nemmers, as her primary care physician, but was also referred to various specialists for examination and treatment. An MRI scan of claimant's cervical spine was completed on November 7, 1994, which, according to the radiologist, showed posterior spondylolisthesis at C5-6 with herniation of the disc at C5-6. Also, a bulge was found at the C4-5 level. But a post-myelogram CT scan completed on January 24, 1995, did not show a herniation or any other significant abnormality, except for degenerative spurring at C5-6.

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[1] *See* K.S.A. 44-510e(a) (1993 Furse).

[2] *See* K.S.A. 44-510c(a)(2) (1993 Furse).

[3] *See* K.S.A. 44-510f(a)(1) (1993 Furse).

In 1995, claimant's left upper extremity symptoms worsened and Dr. Nemmers referred claimant to orthopedic surgeon J. Mark Melhorn, M.D. After a period of conservative treatment, Dr. Melhorn, on June 19, 1995, performed a left carpal tunnel release. Dr. Melhorn followed claimant post-surgery until September 22, 1995. As a result of the left carpal tunnel injury and surgery, Dr. Melhorn assessed claimant with a 7.45 percent permanent functional impairment to the level of the left forearm. The last time Dr. Melhorn saw claimant she had continued complaints of pain and numbness in her left hand.

Claimant's original attorney referred claimant for an independent medical examination to Jane K. Drazek, M.D., a physical medicine and rehabilitation physician. Dr. Drazek saw claimant on February 29, 1996. At that time, claimant had complaints of chronic left cervical pain, left upper extremity pain with paraesthesia and headaches. Dr. Drazek's impression was chronic cervical pain, degenerative changes at C5-6 and status post-left carpal tunnel release. Dr. Drazek's February 29, 1997, report assessed claimant, based on the AMA Guides to the Evaluation of Permanent Impairment (AMA Guides), a 3 percent permanent functional impairment to the body as a whole to the neck and shoulder and a 2 percent permanent functional impairment to the body as a whole for the left upper extremity which she combined for a 5 percent total permanent functional whole body impairment. Dr. Drazek's report did not indicate which edition of the AMA Guides she used. But her later testimony indicated that if she would have used the Fourth Edition of the AMA Guides, she would have assessed the same 5 percent permanent functional impairment rating so she apparently used the Third Edition (Revised) for her original rating. Dr. Drazek imposed the following work restrictions on claimant: (1) avoid repetitive pushing, pulling, lifting and overhead use of the left upper extremity; (2) lifting limited to 35 pounds occasionally; (3) 20 pounds frequently; (4) 10 pounds constantly; and (5) activities requiring repetitive rotation of the neck would likely be poorly tolerated by claimant.

The July 23, 1997, Agreed Award was based on Dr. Drazek's 5 percent whole body permanent functional impairment rating. At the time of the Agreed Award, claimant had returned to her regular job as a MRT 1 for respondent. In fact, Dr. Nemmers testified he released claimant for regular work as early as December 12, 1995. Claimant then remained employed by respondent until July 1997 when she accepted a voluntary layoff offered by respondent. The layoff was offered because respondent was in the process of closing its hospital which was accomplished in December of 1997.

Claimant's regular job as an MRT 1 for respondent exceeded the work restrictions imposed by Dr. Drazek. Claimant testified that her pain and discomfort was so severe that approximately one month before she took the voluntary layoff in July 1997 she was transferred to office work. The office work did not include the heavy lifting and moving of patients.

Claimant last testified in this case at the regular hearing on November 30, 2000. At that time, claimant remained under the care of Brian K. Dennett, M.D., the physician who took over her care and treatment as a result of Dr. Nemmers retiring. Dr. Dennett had referred claimant to Dr. Rodney Jones, who is an anesthesiologist specializing in pain management. Although claimant had not worked since July 1997 she testified her

condition had worsened to the point that she experienced severe chronic headaches, and had less mobility in her neck and left upper extremity.

Claimant has not looked for any type of employment since she left respondent in July 1997. She did start a computer class at the local community college, but she did not complete the class because of the pain and discomfort she experienced when typing on the keyboard. Claimant, however, also testified that she retained the ability to drive an automobile, perform some daily household duties, and take care of the family's pets, which included two dogs, two cats, and an iguana. Claimant worked part-time for her husband's business answering the telephone and paying bills. Claimant has a high school education with additional training as a cosmetologist and has completed two years of college.

The record contains the deposition testimony of five physicians. David J. Nemmers, M.D. was the first physician to see claimant after her August 23, 1994, accident and he continued to serve as her primary physician until he retired sometime in 1999. Brian K. Dennett, M.D. then took over as claimant's primary physician and continued to treat claimant through November 30, 2000, the date of the regular hearing. Jane K. Drazek, M.D., saw claimant for an independent medical examination on February 29, 1996, at claimant's previous attorney's request, then saw claimant at Dr. Nemmers' request on August 3, 1998, and August 25, 1998. The last time Dr. Drazek saw claimant was on the date of Dr. Drazek's deposition on March 30, 1999, at claimant's attorney's request. At respondent's attorney's request, orthopedic surgeon John P. Estivo, D.O. conducted an independent medical examination of claimant on February 16, 2000. Also at respondent's attorney's request, George J. Fluker, M.D., likewise conducted an independent examination of claimant on January 2, 2001.

Respondent argues that claimant failed to prove an increase in the nature and extent of her disability and the ALJ agreed. Thus, claimant's request to modify the July 23, 1996, Agreed Award that awarded claimant a 5 percent permanent partial general disability based on functional impairment was denied.

The review and modification statute effective on claimant's August 23, 1994, accident provided that an award may be modified if the functional impairment or work disability of the injured worker has increased or diminished.[4] Review and modification of an award is appropriate where there has been a change in the claimant's condition.[5] The change does not have to be a change in claimant's physical condition. It could be an economic change, such as a claimant returning to work at a comparable wage,[6] or losing a job because of a layoff. [7] The burden of establishing the changed conditions is on the

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[4] *See* K.S.A. 44-528 (1993 Furse).

[5] *See* Gile v. Associated Co., 223 Kan. 739, 740, 576 P.2d 663 (1978).

[6] *See* Ruddick v. Boeing Company, 263 Kan. 494, 477, 949 P.2d 1132 (1997).

[7] *See* Lee v. Boeing Co., 21 Kan. App. 2d 365, 372, 899 P.2d 516 (1995).

party asserting them. [8] The Board concludes claimant is entitled to a modification of the July 23, 1996, Agreed Award to reflect an increase in her permanent partial general disability because she is no longer earning 90 percent or more of her pre-injury average weekly wage, and, therefore, is entitled to a work disability if it exceeds her functional impairment.[9]

In 1997, respondent transferred claimant to a light office job and then claimant elected to take a voluntary layoff in July 1997, before respondent closed the hospital in December 1997. Where an injured worker loses his or her job because of an economic layoff, the injured worker is entitled to a work disability if it exceeds the worker's functional impairment.[10]

The two components of the work disability test in effect on claimant's August 23, 1994, accident date consisted of first the injured worker's loss in the ability to perform work tasks that the worker performed in jobs during the 15 year period next preceding the accident, as expressed in the opinion of the physician. That percentage is then averaged together with the second component which is the difference between the wage the worker was earning on the date of injury and the wage the worker is earning after injury.[11]

Here, respondent contends claimant failed to prove her work task loss because no physician expressed that opinion as required by K.S.A. 44-510e (Furse 1993). In contrast, claimant argues her work task loss was proven through Dr. Nemmers' testimony that claimant no longer retained the ability to perform respondent's MRT1 job. But that testimony is only a physician's opinion on that particular job and not on the various work tasks that make up that job. In addition, the doctor's testimony does not encompass the 15 year period that claimant worked next preceding the injury. The Board, therefore, concludes that Dr. Nemmers testimony does not establish the work task loss component of the work disability test. Accordingly, claimant has failed to prove percentage of work task lost as result of her work-related accident.

The second work disability component is claimant's wage loss. All of the physicians, who testified in this case, opined that claimant, because of her restrictions, could no longer perform the MRT 1 job she had performed for respondent. But, all of the physicians who testified, expressed the opinion that claimant could still work as long as the work was within the restrictions imposed.

Claimant is intelligent and has a good educational background in that she is a high school graduate and has completed two years of college. Claimant denied having the physical ability to find and retain a job. But claimant also testified that she possessed the

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[8] *See* Morris v. Kansas City Bd. Of Public Util., 3 Kan. App. 2d 527, 531, 598 P.2d 544 (1979).

[9] *See* K.S.A. 44-510e(a) (1993 Furse).

[10] *See* Lee at 372.

[11] *See* K.S.A. 44-510e(a) (1993 Furse).

physical ability to drive an automobile, do some household chores, and take care of the family's pets. Additionally, she worked part-time for her husband answering phones and paying bills. The jobs she was doing were not full-time nor were they part of the open labor market. Nevertheless, claimant has demonstrated the mental and physical ability to perform certain tasks that could transfer into gainful employment in the open labor market. The Board finds claimant retains the ability to work.

Therefore, after claimant was laid off from respondent's employment, she had a duty to make a good faith effort to find appropriate employment.[12] Claimant, however, never made any type of effort to find appropriate employment. Thus, the Board finds claimant did not make a good faith effort to find appropriate employment and the Board is required to determine claimant's appropriate post-injury wage based on the evidence contained in the record.[13]

The record does not contain any expert vocational testimony in regard to claimant's ability to work or her capacity to earn wages. But the Board finds claimant's testimony established that she has a good educational background and retains the ability to perform certain daily living activities that would qualify her to obtain and retain at least entry level sedentary type work. The Board concludes, based on the record presented, that claimant's wage earning ability is at least in the range of minimum wage. The Board, therefore, finds claimant retains the ability to earn $206.00 per week. When compared to her pre-injury average weekly wage of $378.46 this represents a 46 percent wage loss. Claimant has not presented any evidence concerning, and, therefore, has not proven, her loss of task performing ability. Thus, the Board must find claimant's task loss is 0 percent. When this 0 percent task loss is averaged with her 46 percent wage loss claimant has a work disability of 23 percent.

The claimant filed her Application for Review and Modification on October 12, 1998. K.S.A. 44-528(d) (Furse 1993) provides that the effective date of any modification shall not be more than six months before the date the application was filed. Thus, in this case, the effective date of the modification is April 12, 1998.

Accordingly, even though claimant had a work disability on January 1, 1998, after the respondent's hospital closed, she is not entitled to the work disability benefits until April 12, 1998, the effective date of the review and modification award. After taking into consideration the 16.72 weeks of temporary total disability compensation and the 20.66 weeks of permanent partial general disability compensation paid to claimant for a 5 percent permanent partial general disability, the Board finds claimant is entitled to 74.39 weeks of permanent partial general disability compensation based on a 23 percent work disability. The effective date of the review and modification award is April 12, 1998, and the increase in permanent partial general disability will, therefore, commence on April 12, 1998.

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[12] *See* Copeland v. Johnson Group, Inc., 24 Kan. App. 2d 306, 944 P.2d 179 (1997).

[13] *See* Copeland at 320

Claimant is entitled to a 23 percent work disability award less the amount of disability compensation that was actually paid. There cannot be a credit or offset of weeks for which no permanent partial disability compensation was paid. The Kansas Workers Compensation Act makes no provision for any such credit or offset. Therefore, a reduction in the award for the 14.43 weeks from January 1, 1998 through April 12, 1998 would be error.

K.S.A. 44-528(a) (1993 Furse) provides in pertinent part that,

> ...if the administrative law judge finds ...that the award is excessive or inadequate or that the functional impairment or the work disability of the employee has increased or diminished, the administrative law judge may modify such award, or reinstate a prior award, upon such terms as may be just, by increasing or diminishing the compensation subject to the limitations provided in the workers compensation act.

Subsection (d) of K.S.A. 44-528 (1993 Furse) provides:

> Any modification of an award under the section on the basis that the functional impairment or work disability of an employee has increased or diminished shall be effective as of the date that the increase or diminishment actually occurred, except that in no event shall the effective date of any such modification be more than six months prior to the date the application was made for review and modification under this section.

In this case, the date claimant's disability increased is January 1, 1998, because that is the date the hospital closed and respondent could no longer have provided claimant with accommodated work. However, the effective date of the modification award becomes April 12, 1998, because that is six months prior to the date claimant's application for review and modification was filed. There can be only one "effective date". The two dates referred to in K.S.A. 44-528(d) (1993 Furse) must agree. Accordingly, by operation of that statute, the "effective date" of claimant's work disability becomes April 12, 1998.

Because the effective date of the modification of the award is April 12, 1998, and the payment of the work disability award commences on that date, claimant is entitled to the full number of additional weeks of permanent partial disability compensation from that date until fully paid or further order of the director. There is no credit or offset for the weeks from January 1, 1998, through April 12, 1998. Claimant was not paid benefits for those weeks and, by law, the modification was not effective during those weeks.

AWARD

WHEREFORE, it is the finding, decision, and order of the Board that the April 26, 2001, Review and Modification of an Award entered by ALJ Nelsonna Potts-Barnes should be, and is hereby, reversed and an Award modifying the July 23, 1996, Agreed Award is entered as follows:

WHEREFORE, AN AWARD OF COMPENSATION IS HEREBY MADE IN ACCORDANCE WITH THE ABOVE FINDINGS IN FAVOR of the claimant, Patricia Ponder-Coppage, and against the respondent, State of Kansas, and its insurance carrier, the State Self-Insurance Fund, for an accidental injury which occurred August 23, 1994, and based upon an average weekly wage of $378.46.

Commencing April 12, 1998, the effective date of the review and modification award, claimant is entitled to 74.39 weeks of permanent partial general disability compensation at the rate of $252.32 per week for a 23 percent permanent partial general disability, making a total modified award of $18,770.08, which is all due and owing and is ordered paid in one lump sum.

The Board adopts all remaining orders contained in the Review and Modification of an Award.

IT IS SO ORDERED.

Dated this ____ day of January, 2002.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

DISSENT

We respectively disagree with the majority's opinion in regard to the increased number of weeks of permanent partial general disability to which claimant is now entitled as the result of the increase in permanent partial general disability based on a work disability. We agree with the majority's finding that claimant is entitled to a modification of the July 23, 1996, Agreed Award, because claimant's permanent partial general disability increased from a 5 percent award based on functional impairment to a 23 percent award based on a work disability, and that the effective date of the modified award is April 12, 1998. But we disagree with the majority awarding claimant 74.39 increased weeks of

permanent partial general disability commencing April 12, 1998. We would find claimant is only entitled to 59.96 weeks of permanent partial general disability instead of the 74.39 weeks found by the majority.

Claimant suffered injuries in a work related accident while employed by the respondent on August 23, 1994. Respondent provided medical treatment for claimant's injuries and claimant eventually returned to her regular employment. In an Agreed Award entered on July 23, 1996, claimant was awarded 16.72 weeks of temporary total disability compensation at $252.32 per week or $4,218.79, followed by 20.66 weeks of permanent partial general disability at $252.32 per week or $5,212.93[14] for a 5 percent permanent partial general disability based on functional impairment, making a total award of $9,431.72. The total amount of the award was all due and owing on July 23, 1996, and claimant was paid the award in one lump sum less any amounts previously paid. Because claimant returned to her regular job at her regular pay, her permanent partial general disability award was limited to her functional impairment.[15] The Agreed Award also provided that the Award would be treated as if the issues had been fully tried before the Administrative Law Judge which would include the right to request review and modification of the award.

On October 12, 1998, claimant filed an application for review and modification of the July 23, 1998, Agreed Award. The majority found claimant was entitled to modify the Agreed Award because claimant was laid off as a result of respondent closing the hospital where she was employed. The majority found claimant was entitled to a 23 percent permanent partial general disability based on a work disability. The majority also found the claimant's increase in disability actually occurred on January 1, 1998. The majority found claimant was not entitled to that increase until April 12, 1998, because the review and modification statute limits the effective date of an increase or diminishment of claimant's functional impairment or work disability to no more than six months before the date the application for review and modification was filed.[16]

The majority was correct in recognizing that since the claimant did not file her review and modification application until October 12, 1998, then the effective date of the increase was April 12, 1998, instead of January 1, 1998, when the actual disability increase occurred. Where the majority erred was the granting claimant all of the 74.39 weeks of increased permanent partial general disability. We would find, since the effective date of the modified award was April 12, 1998, then claimant was not entitled to the weeks of the increased disability between January 1, 1998, and April 12, 1998, for a total of 14.43

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[14] The July 23, 1996, Agreed Award computes the 20.66 weeks times $252.32 per week to equal $5,213.94. But the Board finds the correct total is $5,212.93.

[15] *See* K.S.A. 44-510e(a) (1993 Furse).

[16] *See* K.S.A. 44-528(d) (1993 Furse).

weeks. Thus, we would find that as of April 12, 1998, the effective date of the modified award, claimant was entitled to an increase in permanent partial disability in the amount of 59.96 weeks instead of the full increase of permanent partial general disability of 74.39 weeks.[17]

The legislative purpose for making the date a modification of an award is effective to not more than six months before the filing of the application had to be to encourage timely filing of the application for review and modification. If either the claimant or the respondent fails to timely file the application, then claimant would not receive the increased benefits at the time the disability increased and respondent would not benefit from any reduction in claimant's disability at the time the disability is found to have diminished.

Here, we would find that the majority's modification award should be reduced by 14.43 weeks of permanent partial general disability at $252.32 per week or $3,640.98. Since the 1993 amendments to the Workers Compensation Act, the percent of permanent partial disability is applied to the 415 maximum weeks an injured worker is entitled to receive payment of permanent partial general disability after subtracting the number of weeks of temporary total disability compensation paid, excluding the first 15 weeks of temporary total compensation paid.[18] Where before the 1993 amendments, the percent of permanent partial disability was applied instead to the claimant's average gross weekly wage and then the result was multiplied by 66 2/3 percent. That weekly amount plus any temporary total disability compensation was paid not to exceed 415 weeks.[19]

We are of the opinion that the majority did not compute the modified award correctly because of the change in computing permanent partial general disability from applying the percent of permanent partial disability to the weeks instead of claimant's average weekly wage. In this case, because of the new accelerated computation method, all of claimant's 16.72 weeks of temporary total disability compensation and 20.66 weeks of permanent partial disability compensation for a 5 percent permanent partial general disability were due and owing at the time of the July 23, 1996, Agreed Award. If the Agreed Award would have been computed by the pre-1993 computation method, claimant on January 1, 1998, the date the disability change occurred, would have been receiving $12.62 per week for the 5 percent permanent partial disability. The increase in the permanent partial general disability to 23 percent would have increased the weekly payment to $58.03 per week. But

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[17] *See* Stokes v. Waste Management of Wichita, WCAB Docket No. 213,595 (March 2000). In Stokes, the Board found claimant's increase in permanent partial general disability actually occurred on September 29, 1998. But because the review and modification award was not effective until November 17, 1998, or a period of seven weeks, claimant was only entitled to an increase of 180.29 weeks of permanent partial disability instead of 187.29 weeks.

[18] *See* K.S.A. 44-510e(a)(2) (1993 Furse).

[19] *See* K.S.A. 1992 Supp. 44-510e(a)(1)(2).

that increase would not have occurred until April 12, 1998, the effective date of the modified award. Thus, because claimant failed to file a timely application within six months of the date the disability increased, claimant would have lost 14.43 weeks of increased benefits.

When the award is computed after the 1993 amendments, the claimant on January 1, 1998, the date the disability increased was not receiving any permanent partial disability payments. The reason claimant was not receiving any permanent partial general disability payments is because of the accelerated computation method which multiplies the percent of permanent partial disability times the weeks instead of claimant's average weekly wage. Since the effective date of the modification was April 12, 1998, instead of January 1, 1998, claimant was not entitled to the increased disability change until April 12, 1998. Therefore, as the claimant did not timely file the application, the claimant loses the weeks between January 1, 1998, and April 12, 1998 which is 14.43 weeks of permanent partial general disability at the rate of $252.32 per week or $3,640.98. This is consistent with the reason behind the accelerated payment method which is for the injured worker to receive payment for permanent partial general disability at an increased weekly rate over a shorter period of time instead of having to wait for payment over 415 weeks. Therefore, as in this case, the loss is also a larger loss when measured over the same period of weeks.

If modified awards are computed under the accelerated method, as the majority has done in this case, then the mandatory language contained in the review and modification statute that states , "...in no event shall the effective date of any such modification be more than six months prior to the date the application was made...",[20] is basically ineffective. For example, in this case the majority's method of computing the modified award would result in claimant receiving all of the increased weeks of permanent partial general disability even if claimant failed to file an application for review and modification until September 3, 2001, some three years, eight months and five days after claimant's disability change occurred on January 1, 1998. The effective date of the modification award, in this example, would be March 3, 2001, and claimant would receive all of the 74.39 increased permanent partial general disability weeks before the 415 weeks after the August 23, 1994, accident would have ended on August 6, 2002.

We would find the review and modification statute is clear and unambiguous. Any modified award based on an increase or diminishment in functional impairment or work disability "...shall be effective as of the date that the increase or diminishment actually occurred, except that in no event shall the effective date of any such modification be more than six months prior to the date the application was made...."[21] When the party seeking

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[20] *See* K.S.A. 44-528(d) (1993 Furse)

[21] *See* K.S.A. 44-528(d) (1993 Furse).

review and modification of an award does not file the application within six months after the increase or diminishment of the disability occurred, then the effective date of the change in disability is not when the change actually occurred but is a date six months before the date the application was filed. Because of the accelerated method of computing awards that is now in existence, the weeks between the date of the actual change in disability and the effective date of the modification award are lost. Those weeks would be lost for the claimant who has proved an increase in disability and would also be lost for the respondent that has proved claimant has a diminished disability.

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BOARD MEMBER

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BOARD MEMBER

c: Jim Lawing, Attorney for Claimant
Jeffery R. Brewer, Attorney for Respondent
Nelsonna Potts-Barnes, Administrative Law Judge
Philip S. Harness, Workers Compensation Director